

Religious Freedom Restoration Act (RFRA) Frequently Asked Questions

1. What does this law do?

- The only thing RFRA does is establish a judicial review standard state courts must follow when they consider cases where government action is alleged to substantially burden an individual's exercise of religion. This general standard of favoring religious freedom can be overcome if the governmental entity has a "compelling interest" in the matter and uses the least restrictive means of furthering that "compelling interest." Typical "compelling interests" of government include prohibiting discrimination against individuals.
- RFRA protects the rights of everyone, regardless of their religious affiliation or lack thereof.

2. I was told that this bill will give a business owner the license to discriminate. Is that true?

- No, this is definitely not true. RFRA can be used only as a defense against *government* action. When businesses enact their own workplace or customer policies, they are not taking government action and the RFRA review standard will not apply.
- Many of the 16 national legal experts (including law professors from IU, Notre Dame and Valparaiso) who supported the adoption of Indiana's RFRA also support gay marriage (see [February 3, 2015 Virginia School of Law RFRA letter](#)). They would hardly support the RFRA review standard if they believed it would result in a license to discriminate.
- As stated in the February 3, 2015 letter: "Opponents of the [RFRA] legislation may make unsupported claims about extreme results that it would produce, but they have no examples of judicial decisions actually reaching such results." (Letter page 4).
- Based on testimony received during discussions on the bill, the House amended the RFRA statute to explicitly state that the law doesn't provide a private cause of action by an employee against a private employer. Apart from specific services directly relevant to personally participating in weddings (such as photographers, ministers, etc.) the specter of religious business owners refusing to serve gays and lesbians has been characterized by the legal experts discussed above as a myth.

3. Why does Indiana need a RFRA law?

- Indiana case law does not follow the majority of states or the federal law when it comes to interpreting government actions alleged to substantially burden religious beliefs. The adoption of the RFRA standard will assure that our state courts follow the same reasoning and case law as the federal courts and 30 other states when they weigh these issues (see map of where State and Federal RFRA laws apply).

4. Why does Indiana need this now?

- The Hobby Lobby case decided last year by the U.S. Supreme Court caused legal scholars to review Indiana's statutes and case law and point out the uncertainties of how these types of cases would be decided in Indiana.

5. How many other states have this law?

- Thirty other states have a RFRA judicial review standard. Nineteen states have enacted a RFRA law: Alabama, Arizona, Connecticut, Florida, Idaho, Illinois, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Mexico, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, and Virginia.
- Eleven state courts have interpreted their state constitutions to provide similar protections as RFRA: Alaska, Hawaii, Maine, Massachusetts, Michigan, Minnesota, Montana, North Carolina, Ohio, Washington, and Wisconsin.
- Indiana case law differs from each of these states and the federal government and legal scholars have labeled the current Indiana judicial review standard as uncertain.

6. How will RFRA impact Hoosiers?

- The bill has been mischaracterized greatly. Hoosiers will likely not notice any difference whatsoever, unless the government is overstepping its bounds to restrict an individual from practicing their religious beliefs.

7. Will I notice a difference? Am I going to start seeing businesses turn people away?

- Have you seen a difference in the 30 other states that have RFRA? Have you noticed a difference since 1993? In 22 years of this standard being applied at the federal and state level, discrimination has never materialized. When matters of discrimination have been decided under RFRA, the courts have uniformly held that the state and federal government have a "compelling interest" in preventing that discrimination.
- All of our neighboring states, Illinois, Ohio, Michigan and Kentucky, have a heightened standard of review like the RFRA when considering government actions that deal with religious rights.

8. How does this apply to businesses?

- This bill provides the same protections to businesses as it does to all Hoosiers. The federal RFRA passed in 1993 also applies to businesses and the Hobby Lobby case illustrated its applications to the owners of a private business.

9. Since the federal government passed this already, why is it needed in Indiana?

- The U.S. Supreme Court has ruled that the federal RFRA does not apply to state and local laws and Indiana's case law is not clear on these issues.

10. I've heard that this will clog up the courts with litigation. Is that true?

- With or without RFRA, people can file any lawsuit they want claiming they should be exempted from some specific law. The question is whether or not they will win that lawsuit.
- RFRA applies in the federal courts and 30 other states, and has not led to a flood of frivolous lawsuits. When people have filed frivolous lawsuits claiming legal exemptions under RFRA, they have lost their cases.

11. Do you have an example of where there was a need for RFRA or where it has been applied?

- There are numerous examples where the RFRA standard has been applied, including the following:
 1. A Jehovah's Witness who lived in Kansas needed a liver transplant; her religion did not allow blood transfusions. A neighboring state had a non-blood transfusion liver transplant; however Kansas denied her request to get the out-of-state procedure. Kansas did not have RFRA.

Since there was no state RFRA, they had to litigate because there was no clearly applicable legal standard (just like in Indiana). She died in the process. If Kansas had adopted the RFRA standard, there would have been a clear direction for the state and the courts.

2. In a 2012 decision, a court ruled that the Pennsylvania RFRA protected the outreach ministry of a group of Philadelphia churches, ruling that the city of Philadelphia could not bar them from feeding homeless individuals. The religious rights of the churches to serve the homeless outweighed the government's interest in health regulations.
3. A Muslim prisoner was asked to shave his beard to comply with prison regulations. It was against the prisoner's religion to shave off his beard.

The U.S. Supreme Court used the Federal RFRA to side with the prisoner because the beard posed no security risk.

4. Obamacare required Hobby Lobby to pay for employees' abortion-inducing drugs. The U. S. Supreme Court concluded that RFRA entitled the owners to an exemption from the regulation because the religious accommodation would not require any of the female employees to do without.